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EXAMINER

EDELL, JOSEPH F

ART UNIT PAPER NUMBER

3636

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Please find below and/or attached an Office communication concerning this application or proceeding.



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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 09/871,199  
Filing Date: May 31, 2001  
Appellant(s): KAIN, JAMES M.

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Kain, James M.  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 24 August 2004.

**(1) *Real Party in Interest***

A statement identifying the real party in interest is contained in the brief.

**(2) *Related Appeals and Interferences***

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

**(3) *Status of Claims***

The statement of the status of the claims contained in the brief is correct.

**(4) *Status of Amendments After Final***

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) *Summary of Invention***

The summary of invention contained in the brief is correct.

**(6) *Issues***

The appellant's statement of the issues in the brief is correct.

**(7) Grouping of Claims**

The rejection of claims 2-31 stand or fall together because appellant's brief does not include a statement that this grouping of claims does not stand or fall together and reasons in support thereof. See 37 CFR 1.192(c)(7).

**(8) Claims Appealed**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(9) Prior Art of Record**

6,478,372 B1	LEMMEYER ET AL.	11-2002
364,519	KAUFFMAN	06-1887
3,279,848	WALKER	10-1966

**(10) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

Claims 2, 3, 6-12, 25, and 27-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lemmeyer et al. in view of Kauffman. This rejection is set forth in a prior Office Action, mailed on 28 January 2004.

Claims 4, 5, 30, and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lemmeyer et al. in view of Kauffman as applied to claims 2, 3, 6-12,

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25, and 27-29. This rejection is set forth in a prior Office Action, mailed on 28 January 2004.

Claims 13-24 and 26 rejected under 35 U.S.C. 103(a) as being unpatentable over Lemmeyer et al. in view of Kauffman as applied to claims 2, 3, 6-12, 25, and 27-29, and further in view of Walker. This rejection is set forth in a prior Office Action, mailed on 28 January 2004.

### ***(11) Response to Argument***

The rejections of set forth in the Office Action mailed 28 January 2004 correctly addresses all the limitations recited in pending claims 2-31, therefore the rejections are maintained.

Applicant argues that the rejection of claims 2, 3, 6-12, 25, and 27-29 as being unpatentable over Lemmeyer et al. in view of Kauffman is in error for essentially three reasons. First, Applicant argues that there is no advantage to extending the U-shaped portions of the armrest of Lemmeyer et al. upwardly and downwardly to allow for the upper bolt to be above the top of the armrest and the lower bolt below the armrest, as taught in Kauffman. One of ordinary skill in the art would have been motivated to modify the U-shaped portions of the armrest of Lemmeyer et al. to extend upwardly and downwardly in view of the suggestion in Kauffman that the seat and armrest configuration is simple to manufacture and provides an armrest that is exceedingly strong armrest (see column 2, lines 6-10); and the armrest with the upwardly and downwardly extending portions is strong enough to even support a

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canopy that may be placed above the head of the occupant to block out unwanted sun, wind, and/or rain (see column 2, lines 17-20). Next, Applicant argues that one of ordinary skill in the art would not have considered the combination of Lemmeyer et al. in view of Kauffman because the bolts taught in Kauffman extend through the armrest into the back, which is different from the teachings of Lemmeyer et al. showing the bolts extending through the armrest into the tongue of the back. However, one skilled in the art would have been motivated to modify the shape of the armrest of Lemmeyer et al. such that the U-shaped portion extends upwardly and downwardly in view of the teachings of Kauffman. The attachment of the bolts into either the back or the tongue is immaterial to the teachings of the advantage in having upwardly and downwardly extending ends of the armrest, as taught in Kauffman. The third and final argument by Applicant, states that the modification of Lemmeyer et al. in view of Kauffman is based upon improper hindsight reasoning. However, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). In this instance, knowledge regarding the simplicity and exceptional strength of an armrest having upwardly and downwardly extending portions (even strong enough to support a canopy), as taught in Kauffman, provides the knowledge to one of ordinary skill in the art to modify the seat assembly of Lemmeyer et al.


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With respect to the statement of Applicant regarding the rejection of claims 4, 5, 30, and 31 as being unpatentable over Lemmeyer et al. in view of Kauffman, the recitation of the relative bolt lengths is a matter of design choice that has no patentable significance. The length of the bolts of the instant application are different simply because the thickness of the tongues widens near the bottom. It would have been an obvious matter of design choice to modify the length of the bolts and/or thickness of the tongue taught in Lemmeyer et al. since Applicant has not disclosed the having the specific bolt length and tongue thickness solves any stated problem or is for any particular purpose. It appears that the armrest would perform equally well with any well known bolt length used in the art. Therefore, claims 4, 5, 30, and 31 should be rejected as being unpatentable over Lemmeyer et al. in view of Kauffman.



With respect to the statement of Applicant regarding the rejection of claims 13-24 and 26 as being unpatentable over Lemmeyer et al., as modified, in view of Walker, Applicant neglects to acknowledge the teachings of the embodiment shown 5-7 of Lemmeyer et al. wherein the armrest is pivotable. The modification of Lemmeyer et al. in view of Walker is not based upon hindsight reasoning because knowledge, which was within the level of ordinary skill in the art, was used in the rejection. Walker teaches that the load support panel prevents unwanted rotation of the armrest downward. Therefore, one of ordinary skill would have been motivated to modify the armrest of Lemmeyer et al. such that the armrest has a load support panel.


For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

  
JE  
November 14, 2004

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